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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,845	10/08/2004	Mathew J. Breitwisch	BUR920040150US1	5844
29154	7590	10/03/2005	EXAMINER	
FREDERICK W. GIBB, III GIBB INTELLECTUAL PROPERTY LAW FIRM, LLC 2568-A RIVA ROAD SUITE 304 ANNAPOLIS, MD 21401			TRAN, THIEN F	
		ART UNIT		PAPER NUMBER
		2811		
DATE MAILED: 10/03/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/711,845	BREITWISCH ET AL.
Examiner	Art Unit	
Thien F. Tran	2811	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. §133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 July 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7 and 27-39 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7 and 27-39 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Levy (USPN 5,469,379).

Levy discloses an antifuse structure (Figure 2) comprising a fin having a center portion 58 and end portions (55, 60), wherein said center portion of said fin comprises a substantially non-conductive region 58 (insulating amorphous silicon) which is capable of permanently becoming a conductor when heated above a predetermined temperature, wherein said end portions comprise conductors.

Regarding claim 2, said center portion of said fin comprises an amorphous material.

Regarding claim 3, it is inherent that said center portion of said fin is approximately 10 times more conductive after being heated above said predetermined temperature when compared to conductivity level of said center portion before heating.

Regarding claim 5, the center portion comprises amorphous silicon before transforming into polycrystalline silicon.

The limitations "being heated above said predetermined temperature" in claims 3 and 5 are taken to be product by process limitations. A product by process claim directed to the product *per se*, no matter how actually made, *In re Hirao*, 190 USPQ 15 at 17 (footnote 3). See *In re Fessman*, 180 USPQ 324, 326 (CCPA 1974); *In re Marosi et al.*, 218 USPQ 289, 292 (Fed. Cir. 1983); and particularly *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985), all of which make it clear that it is the patentability of the final structure of the product "gleaned" from the process steps, which must be determined in a "product by process" claim, and not the patentability of the process. See also MPEP 2113. Moreover, an old and obvious product produced by a new method is not a patentable product, whether claimed in "product by process" claims or not.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Hsu et al. (USPN 5,166,556).

Hsu et al. discloses an antifuse structure (Figure 2) comprising a fin having a center portion 30 and end portions (26, 32), wherein said center portion of said fin comprises a substantially non-conductive region (amorphous silicon-based dielectric) which is capable of permanently becoming a conductor when heated above a predetermined temperature, wherein said end portions comprise conductors.

Regarding claim 6, the end portions (26, 32) comprise silicide regions of the fin.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 7, 27-31, 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levy (USPN 5,469,379).

Regarding claims 4, 30 and 37, Levy as described above does not teach the antifuse structure comprising a center portion having less than approximately 10 percent of the length of the fin. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the center portion having less than 10 percent of the length of the fin, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. In re Daily, 93 USPQ 47 (CCPA 1966), the court held that changes in size and shape of parts of an invention in the absence of an unexpected result involves routine skill in the art. Additionally, In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Regarding claims 7, 27, 33 and 34, Levy does not teach the antifuse structure comprising a fin having a height and length that exceeds more than 2 times a width of the fin. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the fin having a height and length that exceeds

more than 2 times a width of the fin, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. In re Daily, 93 USPQ 47 (CCPA 1966), the court held that changes in size and shape of parts of an invention in the absence of an unexpected result involves routine skill in the art. Additionally, In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Regarding claims 28 and 35, said center portion of said fin comprises an amorphous material.

Regarding claims 29 and 36, it is inherent that said center portion of said fin is approximately 10 times more conductive after being heated above said predetermined temperature when compared to conductivity level of said center portion before heating.

Regarding claims 31 and 38, the center portion comprises amorphous silicon before transforming into polycrystalline silicon.

The limitations "being heated above said predetermined temperature" in claims 29, 31, 36 and 38 are taken to be product by process limitations. A product by process claim directed to the product per se, no matter how actually made, In re Hirao, 190

USPQ 15 at 17 (footnote 3). See *In re Fessman*, 180 USPQ 324, 326 (CCPA 1974); *In re Marosi et al.*, 218 USPQ 289, 292 (Fed. Cir. 1983); and particularly *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985), all of which make it clear that it is the patentability of the final structure of the product “gleaned” from the process steps, which must be determined in a “product by process” claim, and not the patentability of the process. See also MPEP 2113. Moreover, an old and obvious product produced by a new method is not a patentable product, whether claimed in “product by process” claims or not.

Claims 27, 32, 34 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu et al. (USPN 5,166,556).

Hsu et al. as described above do not teach the antifuse structure comprising a fin having a height and length that exceeds more than 2 times a width of the fin. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the fin having a height and length that exceeds more than 2 times a width of the fin, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. *In re Daily*, 93 USPQ 47 (CCPA 1966), the court held that changes in size and shape of parts of an invention in the absence of an unexpected result involves routine skill in the art. Additionally, *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions

would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Regarding claims 32 and 39, the end portions (26, 32) comprise silicide regions of the fin.

Response to Arguments

Applicant's arguments filed 07/19/2005 have been fully considered but they are not persuasive. Applicants argued that neither the link structure 58 of Levy nor the antifuse layer 30 of Hsu are formed in the shape of the fin. The examiner respectfully disagrees with the remark because a "fin" is understood to be a projection that extends from a body and it is quite clear to the examiner that the antifuse structure (layers 55,58,60) of Levy is a projection from a body (substrate 54). Hsu et al. also shows the antifuse structure (26,30,32) that extends from the body 22. Thus, both Levy and Hsu et al clearly disclose the antifuse structures of fin type as claimed. Furthermore, claims in a pending application should be given their broadest reasonable interpretation. In re Pearson, 181 USPQ 641 (CCPA 1974).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thien F. Tran whose telephone number is (571) 272-1665. The examiner can normally be reached on 8:30AM - 5:00PM Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie C. Lee can be reached on (571) 272-1732. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tt
September 29, 2005

Thien Tran
THIEN TRAN
PRIMARY EXAMINER